

Part 4.

Of Obligations or Engagements some Personal Rights, their Nature, the several Kinds of them, how acquired and unnull'd.

Obligation or Engagement is a legal Tie binding one to pay or perform any thing to another. It consists of two Parts, viz. the Interest of the Person to whom the obligation is granted called *ius ad rem*, or rather *ius in personam ad rem consequendam*, a Personal Right, or Power to exact what is due, and the Burden upon him or her who enters in to the Obligation. But these Terms Obligation and Personal Right are often confounded, and used to signify one and the same thing. As when Obligations are said to be assigned and made over, or bequeathed by Will. He in whose Favour an Obligation is conceived, termed in England the *Creditor*, is with us called *Creditor*, because of the Credit and Trust he gives to the other. The Person who lies under the Obligation, termed in England the *Debtor*, is here called *Debtor*, because of the Tie upon him to pay or perform what is due. Thus he who lends Money is the Creditor, and he who borrows it the Debtor, in a Contract of Sale, the Seller is Creditor as to the Price, and the Buyer is Debtor of it; in letting or hiring, the Proprietor is Creditor of the Rent or Hire, and the Tenant is Debtor of it. *l. 50. ff. de verb. signif. §. 1. ff. de reb. cred. Singl. Persons or Societies and Incorporations may be Creditors or Debtors in Obligations.*

Obligations in Favour of single Persons are granted either to one or to more, by one or by more. In Obligations granted to more Persons jointly, termed *correi credendi* *Fellows-Creditors*, if it were only agreed, that the Debtor should owe a Sum of Money to two Creditors jointly, in that Case each Creditor could demand no more than his own Portion. *l. 11. §. 5. ff. de duob. reis.* But if it is treated and agreed, that Payment may be made to any of the two singly; there will be a Solidity among them, and they will be Creditors each of them for the whole. Which Solidity among several Creditors hath not this Effect, that every one of them may appropriate the whole Debt to himself and deprive the others of their Shares, but it consists only in this, that every one of them has a Right to demand and receive the whole, and the Debtor remains quit with Respect to them all by paying the Debt to any one of them. *§. 5. Inst. de duob. reis. l. 13. §. ult. ff. de acceptat. l. 1. ff. de novat.* And after one's Demand of the whole Debt, Payment cannot be made to the other Creditors without him. *l. 16. ff. de duob. reis.* For it may so happen, that those who do not put in their Claims have lost their Right. In Obligations of single Persons, there are two Ways by which two or more may be Debtors of one and the same Thing. One is in the Cases where they all of them together owe the whole Debt, but so as that each of them owes only

This far of Real and Hereditary Rights, Obligations and personal Rights come next under View. Part